

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MMD FAMILY FOUNDATION, et al.,

Plaintiffs,

v.

JAMES LEECH, et al.,

Defendants.

Case No. 16-cv-04967-JCS

**REPORT AND RECOMMENDATION
RE SUA SPONTE REMAND**

I. INTRODUCTION

Defendants James and Janeen Leach, pro se, removed this unlawful detainer action from state court on the basis of federal question jurisdiction. The undersigned recommends that this case be REMANDED sua sponte to the Superior Court of California for the County of Alameda. Because the parties have not consented to the jurisdiction of a United States magistrate judge, this case will be reassigned to a United States district judge for further proceedings, including action on these recommendations. Any party may file objections to these recommendations within fourteen days of being served with a copy of this Report.

II. ANALYSIS

Federal courts have limited subject matter jurisdiction, and may only hear cases falling within their jurisdiction. A defendant may remove a civil action filed in state court if the action could have been filed originally in federal court. 28 U.S.C. § 1441. The removal statutes are construed restrictively so as to limit removal jurisdiction. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941). The Ninth Circuit recognizes a “strong presumption against removal.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (internal quotations omitted). Any doubts as to removability should be resolved in favor of remand. *Matheson v. Progressive*

1 *Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). The defendant bears the burden of
2 showing that removal is proper. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004).

3 Defendant's Notice of Removal invokes federal question jurisdiction. *See* Notice of
4 Removal at p. 9. Federal question jurisdiction under § 1331 encompasses civil actions that arise
5 under the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 1331. "A case
6 'arises under' federal law either where federal law creates the cause of action or 'where the
7 vindication of a right under state law necessarily turns on some construction of federal law.'"
8 *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088 (9th Cir. 2002) (citations omitted).
9 "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded
10 complaint rule,' which provides that federal jurisdiction exists only when a federal question is
11 presented on the face of the plaintiff's properly pleaded complaint." *Wayne v. DHL Worldwide*
12 *Express*, 294 F.3d 1179, 1183 (9th Cir. 2002) (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386,
13 392 (1987)). A federal question must arise from the complaint—it is "settled law that a case may
14 not be removed to federal court on the basis of a federal defense." *Caterpillar*, 482 U.S. at 393.

15 Here, the Complaint alleges only violations of California state law. The federal statutory
16 and constitutional provisions that Defendants invoke in the Notice of Removal are federal
17 defenses, which do not provide a basis for removal. *See Caterpillar*, 482 U.S. at 393. The
18 undersigned therefore finds no basis for federal jurisdiction, and recommends that the case be
19 remanded.¹

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26 ¹ The Court notes that Defendants expressly state in the Notice of Removal that federal
27 jurisdiction is not based on diversity jurisdiction under 28 U.S.C. § 1332. Notice of Removal at 9.
28 In any event, Defendants could not properly remove the action to federal court from California
state court on the basis of diversity because it is apparent from the Notice of Removal that
Defendant James Leach is a local defendant. *See* 28 U.S.C. § 1441(b)(2).

